

Before the
State Water Resources Control Board

In the Matter of the Proposed Revocation of Water Right Permits Nos. 16209, 16210, 16211 and 16212 (Applications 18721, 18723, 21636 and 21637) of the United States Bureau of Reclamation	Policy Statement of the American River Authority
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The American River Authority (“ARA” or “the Authority”) appreciates the opportunity to provide this policy statement to the State Water Resources Control Board in response to the Notice, dated April 28, 2008, concerning the Board’s potential revocation of the Bureau of Reclamation’s water right permits for the Auburn Dam Project. ARA urges that this Board not revoke the USBR’s existing permits for Auburn Dam at this time. ARA has a strong interest in protecting and preserving, for the benefit of the local region it encompasses, the water resources that are the subject of these existing permits. Should the Board nevertheless decide to revoke these permits, the underlying water resources should remain available to the local region on a priority basis under county and area of origin statutes, and pursuant to the State of California reservations in effect pursuant to Applications 7936 and 7937.

The American River Authority was created pursuant to the Joint Exercise of Powers Act on June 8, 1982 by and between Placer County, El Dorado County, Placer County Water Agency, and the El Dorado County Water Agency. Pursuant to Amendment No. 3 to the ARA Joint Powers Agreement, the County of San Joaquin became a member of ARA.

The Purposes of the Authority are broad:

The purposes of this Agreement are to provide for the joint exercise through the Authority of powers common to each of the parties to study, develop, design, finance, acquire, construct, operate, maintain, and replace dams, reservoirs, tunnels, conduits, hydroelectric facilities, and any and all works related and incidental thereto on the American River between the Placer County Water Agency’s Middle Fork American River Project and Folsom Reservoir, either by the Authority alone or in cooperation with the United States or other entities in order to divert, store, distribute and sell water for beneficial use, and to generate, transmit, consume and sell hydroelectric power incidental thereto, or as more specifically set forth in this Agreement. The purposes shall also include the protection, preservation and perfection of rights belonging to the member agencies of this Authority to use the waters of the American River and its tributaries for the benefit of the lands and inhabitants of the parties.

When the Auburn Dam water rights were first considered by this Board in 1970, the Board had to consider the impact of the Auburn Dam Project on the water needs of the local region. The State of California had previously filed water right Applications 7936 and 7937 to preserve water from the American River for the benefit of the people of Placer, Sacramento, and San Joaquin Counties. Application 7937 was for 831,000 afa of storage for consumptive uses within the American River watershed. During the hearings on its own water right applications – the same applications now before the Board - the Bureau of Reclamation asked this Board to release the priority represented by those state filings - to subordinate those state filings - to its Auburn Dam Project water right permits. During those hearings, ARA members sought assurance from this Board that the needs of the residents of local counties would not be jeopardized by the Auburn Dam Project water rights.

In its Decision 1356 as amended, the Water Board found, at that time, that granting the Bureau of Reclamation priority over the state filings would not deprive the counties in the region of water needed for future development, with the understanding that those needs would be met by water from the Auburn Dam Project itself. In particular, for instance, the Board noted that ARA member Placer County Water Agency had already contracted for "as much water as it would need in the foreseeable future" when it executed an agreement with the Bureau of Reclamation for 117,000 acre-feet of water annually, and that other water agencies in the area were negotiating for similar contracts. The Water Board also noted that there were other water sources available to meet future needs of the local counties, and that conditions would be inserted in the Bureau's permits that protected the counties and watershed of origin.

Decision 1356 accorded a prior right (so-called "Condition 19") to the Counties of Placer, Sacramento and San Joaquin to contract for project water before it could be committed, except on a temporary basis, to more remote areas. Decision 1356, as amended in 1970, reaffirmed this intent when the Bureau indicated that it would honor that commitment, noting that the "counties referred to in the condition are clearly within the area entitled to the benefits of the Watershed Protection Law and, if necessary, can assert their rights independently of any terms in the Bureau's permits." In addition Condition 20 of Decision 1356 was not amended and it makes the Bureau's permits for Folsom and Auburn Reservoirs subject to future appropriations for use within the upstream American River watershed. Furthermore, the federal law which authorized the Auburn Project includes the three counties as beneficiaries of the project which are to receive water from project facilities (P. L. 89-161)."

The water supply outlook in 2008 has tightened considerably since 1970. There are currently unmet and under-served needs in these counties and in the American River watershed. The American River watershed region has grown tremendously; the needs of both the populace and the river's fisheries have become more urgent, and sources of supply have diminished. For instance, El Dorado County is in need of additional water supplies and has recently filed an

application for water rights. We note further that Central Valley Project contractors on the American River system have had their deliveries of municipal water supplies cut 25% this year based upon state supply and demand considerations, even though local hydrologic conditions on the American River would not require such cutbacks.

The ARA recently finalized a June 2008 Study of the Auburn – Folsom South Unit, and one of the Study’s key recommendations is that the water rights permits associated with Auburn Dam should be preserved, as their loss would place an unreasonable obstacle on the potential future development of the [Auburn Dam] project.

ARA believes the best present course of action is for the Board to extend the term of USBR’s water rights applications. The Auburn Dam Project has never been de-authorized by Congress, and in fact, there have been substantial appropriations made and substantial construction has been done on the Project. There remain serious and unresolved concerns, for instance, the need of an Auburn Dam to provide additional flood control protection for Sacramento. In these times of concerns about “climate change,” water shortages, even drought, and a very uncertain water future, it would be imprudent to take this project off the table of potentially valuable water supply options by stripping these water rights from the USBR. Members of ARA believe that the Board should not revoke the USBR’s water rights at this time but instead grant an extension of those rights.

If this Board nevertheless determines that the USBR's water right permits are to be revoked, the water under those permits should not revert to a free-for-all over any “unappropriated” water. Rather, ARA requests that the Board confirm, protect and preserve the water of the American River for the benefit of local American River water purveyors, as it did in 1970 in D-1356 as amended.

Should the Board act to revoke the USBR’s rights, ARA supports reserving to local American River Watershed purveyors the right to develop any unappropriated American River water to meet present and future area of origin demands, and requests that this Board act consistently to preserve and protect the unappropriated water for that purpose.